IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Jetha Lal Agarwal. Vs. Automobile Co-operative Workshop Ltd. & Anr.

D.B. SPECIAL APPEAL (WRIT) NO.136/1994
against the judgment dated 15.9.1992 passed in S.B. Civil Writ Petition No.2415/1985.

Date of judgment : 10th July, 2007

PRESENT

HON'BLE ACTING CHIEF JUSTICE MR. RAJESH BALIA
HON'BLE MR. JUSTICE MAHESH CHANDRA SHARMA

Dr. Shailandra Kalla for the appellant.
Mr. M.K. Trivedi for the respondents.

BY THE COURT:- (PER HON'BLE RAJESH BALIA J.)

Heard learned counsel for the parties.

This appeal is directed against the order of learned Single Judge dated 15th September, 1992 by which the writ petition submitted by the respondent challenging the award of Labour Court, Jodhpur dated 21.9.1984 was allowed.

The facts of the present case are that the appellant was appointed as Accountant w.e.f. 5.9.1980 at the establishment of the respondent and his services were terminated on 12.12.1983. The reason for terminating the services was stated to be that the establishment had suffered heavy loss due to which the society had decided to abolish the post of Accountant and Store Keeper. With the termination order, the petitioner was given cheque purporting to be payment towards one month's wages for the notice period as required under Section 25F of the Industrial Disputes Act, 1947 for the period of one month before retrenchment and towards the payment of retrenchment compensation.

The termination order was challenged raising an industrial dispute on two grounds firstly that cheque was delivered to the workman after 2 PM and it was physically impossible for the workman to encash the cheque before expiry of the day, therefore, the payment in lieu of notice and retrenchment compensation was not paid simultaneously with the time retrenchment became

effective. The other contention raised was the amount payable under Section 25F of the Industrial Disputes Act was short.

The Labour Court found the payment by cheque could be in order relying on the provisions of the Negotiable Instrument Act, but found that the payment vide cheque after banking hours was not a payment commensurating with the termination of services, and therefore, the retrenchment must be held to be invalid.

However, the Labour Court found that the amount which was paid towards the wages for one month and retrenchment compensation was the right amount for which cheque was given to the petitioner workman.

Consequently, the award was made directing the employer to reinstate the workman but no back wages were allowed considering that the petitioner was employed during this period somewhere.

This award was challenged by the employer by way of writ petition.

The learned Single Judge found that the payment by cheque notwithstanding it was paid after banking hours was a valid tender under the Negotiable Instrument Act and unless the cheque was dishonoured must be held to be payment in time. On the other issue about the short payment of amount payable under Section 25F if was held that so far as the amount of notice period and retrenchment compensation is concerned, the same was found by the Tribunal to be paid. But as the respondent in his reply has mentioned that dues of salary of period from 1.12.1983 to 12.12.1983 amounting to Rs.260/- over time dues Rs.158/- and dues of leave are also outstanding but the same has not been paid, the Court found that as one month's notice and compensation as required under Section 25F has rightly been calculated and same has been paid and for other dues as indicated by the workman in his reply, the retrenchment cannot be held to be invalid. However, the Court directed the same to

be paid to the workman at the rate of 12% interest, if the same is due to him. As a result of all these findings, the award was set aside. Hence, this appeal.

So far as the first question is concerned that the payment of cheque at 2:00 PM or after 2:00 PM after banking hours was not a payment coinciding with the determination of services, we are in agreement with the learned Single Judge that payment by cheque in the present circumstances was a payment of due amount coinciding with the retrenchment and could not be said that the payment of emolument for notice period or retrenchment compensation was not made at the time the retrenchment became effective.

The learned Labour Court had relied on the decision of Madras High Court in support of its conclusion R. Sankaran Vs. The Presiding Officer, Additional Labour Court, Madras and another 1977 LAB. I.C. 1338 wherein it was held that the retrenchment compensation paid by a cheque on the same day but after the banking hours results in violation of Section

25F of the Industrial Disputes Act.

However, we also find that the decision relied on by learned Single Judge in reversing the finding of Labour Court on this issue, Management of Industrial Chemicals Ltd. Vs. Presiding Officer, Labour Court, Madras and others 1977 (34) F.L.R. Page 403 is a judgment of Division Bench of Madras High Court in appeal against the same judgment relied on by the Labour Court and on this issue. The Division Bench has reversed the finding of the learned Single Judge. We are in agreement with the aforesaid conclusion.

The principle is well settled as also under provisions of the Negotiable Instrument Act that acceptance of negotiable instrument by the receiver of it is as good as a payment in cash and it is founded on the sound reasoning of the modern practice in trade and commerce.

Chagla, Chief Justice considering the effect of payment by cheque has observed in Kirloskar Brs. Ltd.

Vs. Commissioner of Income Tax AIR 1952 (Bom.) 306 as under:-

> "It is also well settled in commercial practice, as I shall presently point out, that a cheque is looked upon as a payment if a creditor accepts a cheque in place of the country's currency."

A Division Bench of Madras High Court held in almost same circumstance in Mohideen Bi V. Khatoon Bi AIR 1966 Madras page 435, wherein it was said that "It is to contended that a payment by cheque is not a good payment having regard to the present practice. The acceptance of cheque without demur amount to payment in discharge of debt is founded on the principle enunciated by the Supreme Court in Commissioner of Income Tax V. Ogale Glass Works AIR 1954 (SC) 429 that if the cheques were taken unconditionally, the cheques not having been dishonoured but having been encashed, the payment related back to the date of receipt of the cheques and in law the dates of payments were the dates of the delivery of the cheques.

About the principle that payment through Negotiable Instrument or cheque, the payment takes effect from the date of delivery of the bill.

Reference can be made to the Supreme Court decision in Commissioner of Income Tax Vs. Ogale Glass Works Ltd. (Supra), wherein the Supreme Court explained the position thus:-

> "When it is said that a payment by negotiable instrument is a conditional payment what is meant is that such payment is subject to a condition subsequent, that, if the negotiable instrument is dishonoured on presentation, the creditor may consider it as waste paper and resort to his original demand."

It clearly shows that a delivery of cheque by the person from whom the amount is due and received by the recipient without protest results in discharge of amount and in case a cheque is ultimately dishonoured it may revive original demand. But when the payment is

received by the cheque it completes the transaction.

It is the principle which has been referred to and applied by the learned Single Judge in judgment under appeal. Hence no interference is called for on principle enunciated by the learned Single Judge on that count.

The other contention of the learned counsel that full amount of retrenchment was not paid at the time of retrenchment also cannot be sustained inasmuch as both the learned Labour Court as well as the learned Single Judge have found that the workman has served for 3 years for which he was required to be paid retrenchment compensation for one and half months for which his remuneration comes to Rs.1,035/-.

The learned Single Judge has considered the contention of the learned counsel for the appellant, who was non-petitioner in the writ petition that according to his submissions made in para No.4 of the return, the only amount due as condition precedent to be paid at

the time of retrenchment were one month's salary in lieu of notice and retrenchment compensation payable under clause (a) and (b) of Section 25F.

The learned Single Judge held that the payment made at the time of retrenchment satisfied the condition of Section 25F and other dues other than the amount payable under Section 25 F(a) and (b) can effect the validity of retrenchment. But those amounts cannot be recovered from the employee, if the same are due. Considering this claim, the learned Single Judge directed that the amount other than the retrenchment compensation and the one month's salary, as per calculation mentioned in para No.4 may be paid to the workman with interest thereon also.

We are in agreement with the finding of learned Single Judge in this connection.

The learned counsel for the appellant has tried to say that calculation submitted by him in para 4 is not correct. However, we had not permitted the

appellant to raise this issue. The finding of the Labour Court on this issue was on the admitted facts about the amount of emolument payable as one month's salary, and retrenchment compensation as shown in para 4. This finding is a finding of fact and is in consonance with the admission made by the non-petitioner appellant in para 4 of his return. He cannot now be permitted to raise new grounds of fact regarding enquiry into the computation of retrenchment compensation and the one month's wages in lieu of notice as suggested by learned counsel for the appellant.

Since we are in agreement with the conclusion reached by the learned Single Judge, there is no merit in this appeal.

The appeal is hereby dismissed. No order as to costs.

[MAHESH CHANDRA SHARMA],J. [RAJESH BALIA], Actg.C.J.

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